authorities of the different parts of the Commonwealth, but a compendious term for a member of the constitutional machinery of each part, and of the embryonic but still amorphous contrivance by which the whole acts in unison, as well as a symbol of the historical traditions and constitutional unity of the peoples of the Britannic Commonwealth; whose Empire is no alien rule but their own self-government.[1]

A NEW CONSTITUTION FOR A NEW AMERICA. By William MacDonald. New York: B. W. Huebsch. 1921. pp. 260.

One who has spent some years in close communion with the Commerce Clause and the Fourteenth Amendment naturally feels apprehension in opening a book that boldly calls itself *A New Constitution for a New America*. It brings an empty feeling in the pit of the brain to think that some second growth of Founding Fathers may in a moment devitalize a considerable body of knowledge laboriously acquired and by a stroke of the pen reduce one from a lawyer to an historian. Yet if the public good requires it, the true patriot will not shrink from the ordeal. Mr. MacDonald's apocalypse must be viewed with unclouded eyes, however much it hurts. Even before the sedative delights of normalcy have fully restored to us our Old America, we will turn our gaze on a New America if Mr. MacDonald insists. Happily, however, he refrains from charting this New America except as it is to be created by his New Constitution. Thus our peace is not invaded in any such disturbing way as Cole and Tawney and Hobson and the Webbs ravish the quiet of Englishmen. If a New America is in time created by Mr. MacDonald, it will come *molliter* and indirectly through the ministrations of the paper changes that he proposes. Even these, when analyzed, are to the constitutional lawyer less drastic than the author's ominous title would lead him to fear.

To the practical politician, however, the new proposals are by no means negligible. Mr. MacDonald courageously disqualifies himself from becoming a public school-teacher in the state of New York so long as Chapter 666 of the Laws of 1921 continues to withhold a certificate from "any person who, while a citizen of the United States, has advocated, either by word of mouth or in writing, a form of government other than the government of the United States or of this state" (EDUCATION LAW, § 555 a). For Mr. MacDonald would have us abandon presidential government for cabinet government. The greater part of his study is devoted to the disadvantages of the former and to specification of the changes necessary to bring us the blessings of the latter. The president is to be so shorn of powers that invariably he can be no more than an amiable figurehead. Senators and representatives are to be elected for concurrent terms, some member of one house or the other is to lead them and to be replaced by a rival when he loses their confidence. The two chambers are to have co-ordinate authority, but what happens when they disagree is not considered. Thus the people are to rule as never before. Perhaps it is with thoughts of happy Britain that the author says: "Only by such changes can the nation rid itself of the one-man power which has become its bane, and recover the control of the government for the people themselves."

One who fears that full popular control may threaten the ancient liberties of minorities which our present Constitution guarantees will be glad to note that Mr. MacDonald does not ask us to give up the Fifth or the Fourteenth Amendment and that he declares explicitly that the Supreme Court should retain its present power to declare legislation unconstitutional. He would even increase these constitutional liberties by new clauses to remedy judicial mis-

[1] The author of the foregoing review prefers to have his name withheld. — ED.

takes that have come to his attention. If, however, the judges of the Supreme Court give us more liberty than is good for us, they are to be removed by the two houses of Congress. By this preservation of judicial review, the constitutional lawyer retains his function and most of his hard-won knowledge and insight. The federal system is to be altered somewhat and the powers of the nation increased at the expense of those of the states. This will make obsolete a little of our learning about the commerce clause, but it will raise new problems on which we can bring to bear most of our familiarity with the work of the Supreme Court in the past. Whatever anxiety Mr. MacDonald's book may bring to those who are adept in manipulating our present political devices, the constitutional lawyer may face its proposals with confidence that they hardly scratch the fundamentals that are dear and familiar to him.

THOMAS REED POWELL.

INTERNATIONAL LAW. By L. Oppenheim. Vol. II. — War and Neutrality. Third edition by Ronald F. Roxburgh. London: Longmans, Green & Co. 1921. pp. xlvi, 671.

The second edition of this volume appeared in 1912. Since that date the law of war and neutrality has been subjected to strains so numerous and so severe that to prepare a new edition was obviously a task demanding great care. The author collected much new material; but he died in 1919, leaving the new edition far from being ready for the press. The editor has not asked sympathy for the heaviness of the burden cast upon him; but clearly it has been unusually difficult to determine what to omit and what to add and how to present the divergent doctrines urged in the World War.

As the time has not yet come for philosophical treatment of the recent and exciting events with which the new matter of this volume necessarily deals, the reader's estimate of the new text will depend largely upon the reader's own nationality. Doubtless the fairness of intent found in the earlier editions is found here also. Yet an American cannot avoid seeing, and saying, that those questions regarding neutral rights and liabilities which arose while the United States was still a neutral are not discussed precisely as they would be discussed by an American.

For example, although throughout the volume it is conscientiously stated that the Declaration of London, of 1909, concerning the rules of naval war, has never been ratified, and although in numerous places (pp. 132, 397–398, 534, 551, 556, 559, 561, 563, 574–575) it is explained that in the early months of the World War some countries, including England, announced a determination to embrace some of the provisions of the Declaration of London and to disregard others, and that later those countries changed their policy by disregarding all new provisions of the Declaration and by professing to act in accordance with pre-existing doctrines — as indeed was clearly their right — nevertheless the volume fails to discuss the view that it is improper to embrace part of a compromise settlement and repudiate the remainder, and especially improper when, as in the Declaration of London, there is an express provision that "the provisions of the present Declaration must be treated as a whole and cannot be separated."

Again, although there is mention of the protest made by the United States against the British order in council of March 11, 1915, and the French decree of March 13, 1915, prohibiting ocean commerce with Germany, and although the explanation given is that by failing to prevent German submarine practices the United States had acquiesced in such practices and must acquiesce in the results of reprisal (pp. 426–427), neverthless it is not stated — doubtless because in England it was hardly realized — that the whole duty of a neutral country is to use due diligence, and that the United States had protested